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TAGS: [PARM](#) [PREL](#) [CWC](#) [OPCW](#) [CBW](#)
SUBJECT: CWC: GUIDANCE FOR APRIL 1-2, 2009 CHEMICAL
INDUSTRY ISSUES CONSULTATIONS

REF: A. S/641/2007 (MAY 25 2007 DG NOTE ON INITIATIVE BY
THE DG ON OCPF SELECTION METHODOLOGY)
[¶B.](#) EC-55/DG.8 (FEBRUARY 2 2009 DG NOTE ON OCPF
SELECTION METHODOLOGY PERFORMANCE)
[¶C.](#) 2008 STATE 101009 (SEPTEMBER 22 2008) GUIDANCE
FOR SEPTEMBER 25-26 2008 WORKSHOP)
[¶D.](#) 2009 THE HAGUE 000099 (FEBRUARY 16 REPORT FOR
THE FEBRUARY 10 2009 INDUSTRY CLUSTER
MEETINGS)
[¶E.](#) FACILITATORS NOTE (MARCH 24 DRAFT DECISION ON
2A/2A* LOW CONCENTRATIONS)
[¶F.](#) 15 CFR VOLUME 2 PART 713 (ACTIVITIES INVOLVING
SCHEDULE 2 CHEMICALS)
[¶G.](#) 22 USC SECTION 006742 (PROHIBITION RELATING TO
LOW CONCENTRATIONS OF SCHEDULE 2 AND 3
CHEMICALS)
[¶H.](#) EC-53/S/5 (JUNE 17 TS NOTE ON ENHANCED
INFORMATION IN OCPF DECLARATIONS)
[¶I.](#) EC-53/DG.11 (JUNE 17 DG NOTE ON OCPF FACILITY
DECLARATION INFORMATION)
[¶J.](#) 2008 STATE 072706 (JULY 7 GUIDANCE FOR JULY 8
2008 CHEMICAL INDUSTRY CONSULTATIONS)

[¶1.](#) (U) This document provides guidance for the CWC Delegation
in The Hague for three consultation sessions on chemical
industry issues being held by the Organization for the
Prohibition of Chemical Weapons (OPCW) on April 1-2, 2009.
The April 1, 2009 session will address inspection results for
other chemical production facilities (OCPFs) for 2008. Two
sessions on April 2, 2009 will address low concentration
limits for Schedule 2A and 2A* chemicals and the enhancement
of OCPF declarations.

[¶2.](#) (U) The first consultation session is expected to provide
a forum for States Parties to share their views for the first
time on a report from the Director General (DG) on 2008 OCPF
inspection results that was released prior to the February
17-20, 2009 Executive Council Session. The next two sessions
are continuations of ongoing consultations, and will provide
opportunities to make substantive progress on Schedule 2A and
2A* low concentration limits and the enhancement of OCPF
declarations.

2008 Results of the OCPF Site Selection

[¶3.](#) (U) In response to States Parties, concerns with the
effectiveness of the methodology used to select OCPF sites
for inspection, the Technical Secretariat (T.S.) developed a
modified selection methodology in 2007, based on proposals
from the industry cluster consultations (Ref. A). The
modified methodology was used for OCPF selection beginning in
January 2008. The February 2, 2009 DG Note (Ref. B) provides
an analysis of the results after one year (for the 118 OCPF
inspections in 2008).

[¶4.](#) (U) Del should allow other States Parties to initiate

discussion, with particular attention to States Parties critical of the modified methodology and the issues raised, the results of its application, and any alternatives suggested.

¶15. (U) Del should acknowledge that the results for 2008, as compared to 2007 OCPF inspections, show:

- a demonstrable change in the distribution of numbers of inspections toward States Parties with larger numbers of declared sites;
- an increase in the overall percentage of inspections at high or medium relevance facilities, based on the A14 methodology (See Ref. C for methodology background); and
- a greater percentage of inspections in the developed regions - Asia and Western Europe and Others groups (for 2008 inspections compared to all OCPF inspection through 2007).

¶16. (U) Del should support continued implementation of the modified methodology through 2009 with reassessment based on 2009 results and its interaction with any additional changes in selection methodology.

Applicable Concentrations Limits for Mixtures of Schedule 2A and 2A* Chemicals

¶17. (U) The most recent consultation on Schedule 2A and 2A* low concentration limits) February 10, 2009) produced little change in the two groupings of States Parties, those supporting a limit of 1 % or less, or those supporting a higher (e.g., 30%) limit (Ref. D). In an effort to move to a resolution, the facilitator has distributed a draft decision with 1% or less, 5% or less, or 10% or less as the proposed limit, to be implemented by January 1, 2011 with review one year after implementation (Ref. E).

¶18. (SBU) The continued split into two entrenched &high8 and &low8 positions has led to the facilitator's effort to focus on finding a compromise level that can gain consensus approval. There is long-standing concern with the inability of impacted States Parties to reach agreement on a compromise (e.g., from RevCon 2), and a recent indication that the Non-Aligned Movement might use the inability of Western States Parties to come to agreement to hold hostage expanded OCPF verification efforts (Ref. D).

¶19. (U) The U.S. position to date had been shaped by the limitation imposed by current U.S. regulations set at 30% and the lower limit for U.S. regulations set in U.S. implementing legislation at 10% (Refs. F and G, respectively.), i.e., that the United States will continue to regulate at the 30% level until there is an acceptable compromise solution, but would tentatively support a limit of &10% or less8 if a consensus had developed. The U.S. position has now been modified. We could accept the &10% or less8 limit if others also accept it. Del should urge delegations from both the &high8 and &low8 groups to endorse &10% or less8 as the acceptable compromise solution.

¶10. (U) Del should make the following points during the discussion:

- The United States believes that further technical discussion will not lead to a generally accepted approach and that political flexibility to move off entrenched positions is needed.
- The United States supports the facilitator's effort to focus on a specific text on this issue and to encourage delegations to work toward a political compromise.
- The draft decision (with a compromise lower limit, 2011 implementation, and assessment of the consequences of its implementation after one year) is a potentially viable solution.

- In addition to the three alternative levels currently being considered in the draft decision ((1%), (5%), and (10%) or less), a &30% or less⁸ limit should also be included in the draft decision to include the full range of States Parties, positions.

) The United States could support, as a compromise solution, the limit of &10% or less⁸ on the condition that others do so, as well.

Del should note any alternatives to the facilitator,s draft decision suggested by other delegations and any specific information presented, and report back to Washington. If appropriate, Del should seek out the suggesting delegation for bilateral discussion of the details of their proposal.

Enhancement of OCPF declarations

¶11. (U) This session is expected to continue the February 10, 2009 discussion of the Note from the T.S. (Ref. H) and its proposed changes to OCPF declaration form, which would require submission of additional information on the types of processes used and plant configuration) batch or continuous processes and dedicated or multipurpose chemical production. During the February 2009 consultation, States Parties focused on the impact of the proposal on National Authorities and industry, and the need for clarification of the definitions for the added information required. The United States reported that it was still considering the proposal and did not offer specific comment.

¶12. (U) Del should state that the United States has carefully reviewed the Note from the T.S. and consulted with the U.S. chemical industry on inclusion of the new declaration data, and offer the following points, based on these actions, in discussion of the T.S. Note:

- The United States supports the T.S. in its continuing efforts to focus OCPF inspection efforts on sites of most relevance to the Convention.

- The United States is concerned with instituting permanent changes to the declaration regime when the added value is unclear and believes that this consultation should closely examine the estimated effect of the T.S. proposal to determine if the declaration changes would yield positive and quantifiable results.

- The United States believes that discussions of expanding declaration data should also include an assessment of the impact on inspection activities.

- The United States believes that with any refinement of the selection methodology a mix of inspections at the three types of OCPF plants sites (i.e., high, medium, and low relevance, as designated by the T.S.) should be maintained.

- Our analysis of the seven U.S. OCPF sites inspected in 2008 suggested that the proposed declaration change would not have resulted in more relevant sites (i.e., batch / multipurpose) being inspected. Thus, The United States believes it would be beneficial for the T.S. to prepare an unclassified study of all 2008 OCPF inspections (118 sites) to determine if the proposed change would have resulted in the inspection of more relevant sites. This analysis would be most useful if it included a determination of: 1) the breakdown of inspections between high, medium and low relevance sites; and 2) the equipment characteristics and process type of each category of inspection. This information would enable the consultation to assess how well these types of facilities are currently being captured and inspected under the current methodology.

¶13. (U) The Note from the DG on additional, voluntary actions by the T.S. and States Parties to enhance OCPF declarations

(Ref. I) may also be discussed. This consultation has not addressed this Note since its initial session in November 2008. We expect the focus to be on continued discussion of its implementation. Del guidance remains consistent with the earlier consultations (Refs. C and J), e.g.:

- We recognize that the T.S. and voluntary States Parties, actions in the DG,s Note will yield incremental improvements, but the magnitude is not known. We encourage the TS to provide an assessment of the potential effect of these voluntary changes.

- The T.S. must ensure that Inspection Teams understand that the proposed use of amended group codes is voluntary and document future inspections accordingly, e.g., that not using the amended group codes should not be recorded in inspection reports as an issue requiring further action on the part of the plant site or State Party.

Del should query other delegations on their experience to date in implementing any of the voluntary measures and their assessment of the potential value of their actions.

¶14. (U) During the last consultation, the facilitator indicated that this session could also include T.S. discussions of the A14 algorithm used in the site selection methodology and an overview of the new &R8 value defined in the DG Note (Ref. B). Del should take careful note of any information presented and report back to Washington.

CLINTON